

**RULES
OF
THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION
ADMINISTRATIVE SERVICES DIVISION**

**CHAPTER 0940—2—3
PERSONNEL CONDUCT TOWARD
PATIENTS AND RESIDENTS**

TABLE OF CONTENTS

0940—2—3—.01	Purpose	0940—2—3—.04	Other Kinds of Mistreatment of Residents Or Patients by Employees
0940—2—3—.02	Justified Employee Conduct		
0940—2—3—.03	Resident or Patient Abuse by Employees	0940—2—3—.05	Presumption of Failure to Perform Duties

0940—2—3—.01 PURPOSE.

- (1) The prevention and correction of staff conduct which interferes with the right of residents and patients to humane care and treatment under *T.C.A. 33—306(b)* is of the highest priority at all facilities of the Department. All residents and patients in its facilities shall be treated with dignity, respect, and consideration. Improper conduct of any kind and in particular any conduct which is abusive toward residents and patients is not tolerated. Any employee who engages in conduct covered by these rules shall be immediately disciplined in conformity with them. Other kinds of conduct which may affect residents or patients are governed by other laws, rules, and policies.
- (2) The specific purpose of these rules is to provide clear guidance to administrators and employees as to conduct which the Department views as against the good of the service under *T.C.A. 8—30—326* and violative of the rules of the Department of Personnel found in Chapter 1120—7—2 of the Rules and Regulations of the State of Tennessee and to prescribe mandatory action to be taken in cases of resident or patient abuse.

Authority: *T.C.A. §§33—104, 33—105, 33—306(b).* **Administrative History:** *Original rule filed February 3, 1983; effective March 16, 1983.*

0940—2—3—.02. JUSTIFIED EMPLOYEE CONDUCT.

IF:

- (1) an employee engages in conduct which would otherwise be a violation of Rule 0940—2—3—.03 or .04,
AND
- (2) (a) the conduct is reasonably necessary to protect either the resident or patient or the employee or
another person from harm, OR

(b) the conduct is authorized by the resident's or patient's individual habilitative or treatment plan which
reasonably appears to be a proper plan, THEN
- (3) the employee is not guilty of a violation of this Chapter by that conduct.

Authority: *T.C.A. §§ 33—104, 33—105 and 33—306(b).* **Administrative History:** *Original rule filed February 3, 1983; effective March 16, 1983.*

0940—2—3—.03 RESIDENT OR PATIENT ABUSE BY EMPLOYEES. Employees shall not:

- (a) Knowingly threaten to touch, attempt to touch, or actually touch a resident or patient in any manner which
a reasonable person would recognize as likely to be harmful or painful or to cause mental anguish, or

(Rule 0940-2-3-.03, continued)

- (b) Knowingly suggest, invite, permit, or engage in any sexual contact or sexual intercourse between an employee and a resident or patient who is not the employee's spouse, or
- (c) Knowingly engage in any conduct toward a resident or patient which a reasonable person would recognize as brutal or cruel under the circumstances, or
- (d) Knowingly fail to take reasonable steps to intervene to prevent or stop resident or patient abuse by another employee or conduct by a resident or patient which is likely to be harmful to another resident or patient, or
- (e) Knowingly fail to perform duties with respect to a resident or patient when such failure is likely to disrupt the habilitative or treatment plan of the resident or patient, or
- (f) Fail to perform duties with respect to a resident or patient when such failure is likely to expose the resident or patient to an unreasonable risk of physical, developmental or mental harm.

If an employee engages in conduct prohibited by this rule, the employee is guilty of conduct against the good of the service, and the employee shall be dismissed. Such a violation is most likely to be determined to be gross misconduct.

Authority: T.C.A. §§ 33—104, 33—105 and 33—306(b). **Administrative History:** Original rule filed February 3, 1983; effective March 16, 1983.

0940—2—3—.04 OTHER KINDS OF MISTREATMENT OF RESIDENTS OR PATIENTS BY EMPLOYEES. Employees shall not:

- (a) Knowingly threaten to touch, attempt to touch, or actually touch a resident or patient in any manner which a reasonable person would recognize as likely to be offensive, or
- (b) Knowingly engage in any conduct which is violative of a resident's or patient's human dignity, or
- (c) Knowingly cause or encourage a resident or patient to violate the law, or
- (d) Knowingly make or cause use of a resident's or patient's property to the disadvantage of the resident or patient or in any way which violates the law or the rules or policies of the Department or the institution with or without the consent of the resident or patient, or
- (e) Permit any kind of mistreatment of a resident or patient to any degree by failure to perform supervisory duties properly, or
- (f) Make unjustified derogatory comments about a resident or patient to or in the presence of the resident or patient or another person, or
- (g) Knowingly fail to take reasonable steps to intervene to prevent or stop any kind of mistreatment of a resident or patient by another employee, or
- (h) Knowingly fail to report promptly a violation of Rule 0940—2—3—.03 or .04 or to cooperate with an investigation of such conduct, or
- (i) Otherwise fail to perform duties with respect to a resident or patient.

If an employee engages in conduct prohibited by this rule, the employee is guilty of conduct against the good of the service and the employee is subject to discipline, including suspension or dismissal. Mistreatment of a resident or patient may also be determined to be gross misconduct.

(Rule 0940-2-3-.04, continued)

Authority: T.C.A. §§ 33—104, 33—105 and 33—306(b). **Administrative History:** Original rule filed February 3, 1983; effective March 16, 1983.

0940—2—3—.05 PRESUMPTION OF FAILURE TO PERFORM DUTIES. It is presumed under this Chapter that an employee has failed to perform duties with respect to a resident or patient in violation of Rule 0940—2—3—.04 (5), (7), or (9) when the following facts are established after a thorough investigation:

- (1) the resident or patient is suffering from a wound, injury, disability, or physical or mental condition which is of such a nature as to reasonably indicate that it has been caused by brutality, abuse, or neglect or which on the basis of available information reasonably appears to have been caused by brutality, abuse, or neglect, and
- (2) the identity of the person who caused the harm cannot be determined, and
- (3) the period of time and the unit or place in which the harm occurred can be determined with reasonable particularity, and
- (4) the employee had, in the unit or place and during that time, either direct responsibility for the care of the resident or patient or direct access to the person.

Authority: T.C.A. §§ 33—104, 33—105 and 33—306(b). **Administrative History:** Original rule filed February 3, 1983; effective March 16, 1983.